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‘Quiet’ Transitional Justice: ‘Publicness,’ Trust and Legitimacy in the Search for the ‘Disappeared.’

Abstract

There is a pragmatic value to developing TJ processes quietly. At first glance, such ‘quietness’ may seem to contradict the principles often associated with TJ, such as ‘publicness,’ openness, and the leaving behind of secrecy and silence. However, I argue that behind-the-scenes efforts and processes are an often-overlooked part of more public-facing TJ mechanisms, and that their quiet nature raises questions that should be more fully understood, particularly around the notions of trust and legitimacy. This paper introduces the notion of ‘quiet’ Transitional Justice, drawing on the example of the establishment of the Independent Commission for the Location of Victims’ Remains (ICLVR) – established to locate the remains of Northern Ireland’s ‘disappeared.’ I argue that quiet diplomatic efforts in the development of legislation, and the ‘quiet’ passage of that legislation, facilitated the development of a workable mechanism which has, to a large extent, been effective, has facilitated (limited) truth recovery and the development of trust, and can be argued to have legitimacy.

Keywords: Transitional Justice, 'disappearances,' trust, legitimacy, Northern Ireland, 'publicness,' truth recovery

Introduction

One of the much-discussed features of Transitional Justice (TJ) is its requirement for 'publicness'. TJ processes such as the trial of Slobodan Milosevic, the South African Truth Commission (SATRC), piles of FARC weapons being verified by the United Nations or David Cameron's apology in the wake of the Saville Inquiry into the events of Bloody Sunday all have strong performative dimensions (Bentley 2015; Bozzoli 1998; Cole 2010; Meijers and Glasius 2013; Theidon 2007). However, as Cole (2010: 5) has argued with regard to the SATRC, for such public facing mechanisms, while the hearings became 'emblematic,' each represented 'countless hours spent behind closed doors'. Such 'behind closed doors work' is an example of what I have termed 'quiet' Transitional justice (QTJ). In particular, this article focuses on the pragmatic utility and necessity of developing some TJ processes quietly, notwithstanding the much vaunted values of 'publicness' and transparency associated with the field.¹

The variant of QTJ which I am advancing is quite practical in its orientation. It involves a number of components. First, given the focus of TJ, it involves an attempt to come to terms with violence and human rights abuses of the past (see e.g. Lawther, Moffett and Jacobs 2017; McEvoy and Mallinder 2017; Roht-Arriaza and Mariezcurrena 2006; Teitel 2000). Second, it is work that is done behind closed doors. This private style of TJ involves discussion and negotiations between the different actors and the concurrent exclusion of the media and broader public from those conversations. Third, in some instances, as was the case with the ‘disappeared’ in Ireland, the outworkings of these deliberations do become public, albeit in a carefully managed and choreographed fashion. In other contexts, the results of such processes might not become known for years or even decades. For example, during Uruguay’s confidential Naval Club talks of 1984, the military and democratic politicians are believed to have made a ‘gentleman’s agreement’ that the civilian government would refrain from prosecuting the military for their human rights violations. In this case, a form of amnesty was introduced, but it was not formally or publicly acknowledged by the government (Mallinder 2009; Sriram 2004). Fourth, the mechanism is then implemented and at some level *delivers* what it promised particularly to the victims who are, rhetorically at least, at the centre of all TJ processes (Brown and Ní Aoláin 2014; Karstedt 2010; McEvoy and

McConnachie 2013). Of course, TJ mechanisms can fail, and often there are significant disputes about whether measures such as the SATRC have 'worked.' However, the version of QTJ which I am advancing requires that there be some transition from the *status quo ante*.

I argue that the processes that take place 'behind the scenes' are currently insufficiently scrutinised by scholars. This gap is important because not only do such processes appear contradictory to the principles of TJ as they are widely understood, but the important influence of such work on the design and functioning of TJ mechanisms is missed. The development and work of the Independent Commission for the Location of Victims' Remains (ICLVR), established in 1999 to locate those 'disappeared' during the conflict in and about Northern Ireland, will be used as a case study to examine the influence and importance of QTJ in building trust and facilitating a process of (limited) truth-seeking. This article is divided into two parts. In the first, drawing upon the literature of quiet diplomacy in particular, I explore the context, gestation and passage of the 'disappeared' legislation. In the second part, I explore the relationship between QTJ and three key themes of broader applicability to the theory and practice of TJ which can be drawn from the 'disappeared' case study. The first of these is truth recovery. In this section I draw on the work of

Hayner (2002), Osiel (1999), Roht-Arriaza (2006) and others to examine how truth recovery processes function in transitional contexts, and I analyse the role of the ICLVR as an ‘incentiviser’ of truth provision. Second, the theme of trust is introduced by charting how trust is defined across disciplines such as sociology (e.g. Giddens 1984; Misztal 1996), social psychology (e.g. Deutsch 1958) and economics (e.g. La Porta et al 1997). In this section I analyse the role of trust in transitional contexts, drawing on the work of Lederach (1997) and others, and I examine the development of relationships of trust through both the establishment and functioning of the ICLVR. The third theme is legitimacy. In this section the work of scholars such as Arthur (2009), Beetham (1991) and Leebaw (2008) is utilised to examine how legitimacy is defined, and its significance to TJ. I argue that the ICLVR can be argued to be legitimate as a result of its victim-centredness, that the process takes the concerns of the perpetrators and their constituencies seriously, and that it has, for the most part, ‘worked.’

In this article I will examine how some of the obvious challenges associated with what some have termed a ‘de facto amnesty’ for those paramilitary interlocutors involved in seeking to recover the remains of those who had been murdered and disappeared have been addressed. This examination is

particularly timely in the context of Northern Ireland, as the ICLVR has been cited as a precedent for the development of an Independent Commission for Information Retrieval (ICIR) – one of the institutions proposed in the Stormont House Agreement to address the legacy of the conflict which is due to be legislated in 2019. More broadly, the work of this institution provides the basis for interesting theoretical questions about the intersection between publicness, trust and legitimacy in TJ.

‘Publicness,’ Justice and Transition

The term ‘publicness’ features in organisational theory as ‘the degree to which organisations are affected by political authority’ (Bozeman 1987, xi). From this perspective, ‘publicness’ is about the impact of a public or publics on an institution (see also e.g. Antonsen and Jorgensen 1997; Bernstein 2014). In research on social media, the term ‘publicness’ is used in a different way, to describe how individuals use “communication media to make information and...points of view visible and available to others” (Slevin 2000, 182; see also Vivienne and Burgess 2012). For others, such as Bateman et al (2011), ‘publicness’ is used in a broader sense, as a term for the ‘public nature’ of (in their case) social media platforms. Similarly, for some geographers, ‘publicness’ is used to refer to the ‘publicity’ of a space with publicity defined as ‘the

conditions for and of being public' (Staehelli and Mitchell 2007, 809). It is within these broader understandings of 'publicness' that my use of the term is embedded.

For current purposes, there are three, at times overlapping, elements to 'publicness' which are of particular relevance. The first is that 'publicness' involves some form of performance. For Tilly (2008, 211), public performances are used to make 'consequential, collective, public claims on others'— either by using words or actions. Second – and linked to this - is the need for an audience. As will be detailed below, the broadcasting of truth commissions and trials on TV, radio, and through newspaper reports brings such mechanisms to a wide audience. Articulated by Edelman (1974, 100), the TV screen becomes 'an instrument for influencing opinion and response' from a mass audience. Third, Haldemann (2008, 725) has described efforts to tell the truth of the past as 'a process of collective history-making.' As the next few paragraphs will explore, in much of TJ these three elements of performance, audience and 'collective history-making' come together to contribute to its 'publicness.' While this 'publicness' results in part from efforts to provide some broader acknowledgement or recognition of victims' suffering, it is also designed to impact upon the audience bearing witness, forming part of the process of

constructing a collective narrative of the past. The 'publicness' of TJ is about 'making public memory, publicly' (Osiel 1999, 217).

The origins of what is now termed TJ are usually traced back to the Nuremberg tribunals of the Nazi war criminals (Teitel 2003). As Osiel (2000:2) and others have argued, such trials were legally didactic, deliberately designed to encourage a 'public reckoning with the question of how such horrific events could have happened.' They were staged with an eye not only to ensuring that justice would be done but also as an instrument of what Douglas (2001) has termed 'historical tutelage' - a vehicle for what one Nuremberg prosecutor described as 'the greatest history seminar ever held' (Buruma 2009 145).

Of course scholars of punishment and society have long been live to the relationship between retribution, justice and performance. For example, Foucault's (1977, 8) famous description of the execution of Damians the regicide as 'punishment as a spectacle' deliberately focuses upon the effect of the torture and execution upon the audience rather than solely on the punished. This visibility or 'publicness' of punishment is central to what has been described as its 'expressive' function (see e.g. Drumbl 2007; Feinberg 1970; Garland 1990; Sloane 2007). For some, punishment's 'expressive' function is rooted in its expression of public sentiments such as blame, aggression,

anxiety, hostility, or resentment (Feinberg 1970; Garland 1990). 'Punishment,' we are told 'bears the aspect of legitimized vengeance' channelling a community's negative feelings in a legal and legitimate way (Feinberg 1970, 100). In this regard, punishment can be considered as 'language' (Kahan 1996) which disavows wrongdoing and 'tells the world' that actions are wrong (Feinberg 1970, 102). It also, of course, sends 'moral messages on the value of the rule of law' (Elander 2013, 95).

In the contexts where TJ mechanisms are deployed, usually characterised by extreme violence, human rights abuses, and the absence of the rule of law, the need for such expressive functions is often all the more acute. The performative nature of TJ mechanisms is central to constructing narratives about the past (Karstedt 2009; Osiel 2000). For example, transitional trials are said to serve as 'morality tales' (Karstedt 2009, 2): a 'public reckoning with the question of how such horrific events could have happened' and a buttress to prevent them happening again (Osiel 2000, 2). By way of illustration, Douglas argues that the Eichmann and Nuremberg trials were 'show trials' designed to 'show the world the facts of astonishing crimes and to demonstrate the power of the law to reintroduce order' (Douglas 2001, 3).

Of course it is not only the retributive variants of TJ which have such an emphasis on publicness. As noted above, the best known truth recovery body in the world (the SATRC) went about its business in a self-consciously 'public' fashion, containing what Catherine Cole (2010: xvi) has termed 'complex genealogies of performance...part law court, part Christian ritual, part psychological talking cure.' While some older truth commissions did their work largely in private, as the International Centre for Transitional Justice makes clear in its 'how to design an effective truth commission' toolkit, since the South African experience, the 'public disclosure of truth', facilitating 'public participation' and outreach are viewed as key to the legitimacy of such bodies and 'public hearings' often broadcast through the media, websites and other sources, are now a common feature of their work (ICTJ 2013: 24).

The 'publicness' of TJ is not simply a technical matter related to how mechanisms such as truth commissions should do their work. Rather, it is often seen as a fundamental principle linked to broader social and political ambitions to transform societies from what went before (Karstedt 2009; Cole 2010). TJ is not just about making the facts of past horrors known (Roht-Arriaza 2006), it also requires processes which *publicly* recognise that harm and its wrongness (Cohen 2001). As Hayner (2011) has argued, transitional justice is designed to

present people with an opportunity to confront a history of secrecy, denial, silence and fear through an ‘exhumation’ of that past, an acknowledgement of what happened and the implementation of restorative measures such as reparations or apologies which are designed to help those who have been harmed.

With such significance placed in the field on the importance of ‘publicness,’ in the next section I want to explore the evolution of a TJ mechanism which is arguably the antithesis of such a perspective on TJ. Indeed, for some of its critics, the mechanism discussed below was “obnoxious,” “dangerous,” “offensive,” and undermining of the rule of law (HC Deb 10 May 1999, vol 331, cols 56-58), amounting to “an amnesty” for “some of the most depraved acts in Irish history” (Uffindell 1999). It certainly created a highly secretive process which rendered prosecution of those involved in perpetrating these ‘disappearances’ even less likely than it already was (Dempster 2019). However, I will argue that such a variant of TJ was legitimate and moreover that it proved successful in achieving much of what it was established to do.

Public and Private Peace-making in Northern Ireland

'Dramatic political performance' became a feature of peacebuilding in Northern Ireland, where, it is argued, the 'symbolic performance' of politics had a 'special resonance' (Harrington and Mitchell 1999, 1). Iconic images of prisoners leaving prison as part of the early release scheme, former enemies Martin McGuinness and Ian Paisley laughing together as Deputy First Minister and First Minister or David Cameron's televised apology for Bloody Sunday are etched on the public consciousness. Particularly meaningful during the transition away from violence, such moments were consciously designed to 'engage, impress and persuade an audience,' (Harrington and Mitchell 1999, 2). However, I will argue that there were many moments that required the absence of audience in order to succeed.

As will be examined further below, a back-channel of communication between the IRA and the British government between 1990 and 1993 was a 'key component' of the 1994 ceasefire and subsequent peace process (Ó Dochartaigh 2011, 770). Quiet diplomatic efforts continued post-Good Friday Agreement (GFA) on weapons decommissioning, getting Republicans to support policing in Northern Ireland for the first time since the formation of the state and the periodic restoration of devolution after each collapse.² By way of illustration, former Chief of Staff to Tony Blair, Jonathan Powell, has described

the behind-the-scenes efforts to reach agreement on the decommissioning of paramilitary weapons thus:

We tried to break the process into little steps which would then be choreographed so that both sides had confidence they were moving together, rather than feeling as if they were having to trust the other side to reciprocate if they made the first move (Powell 2009, 149-150).

In short, quiet diplomatic efforts at the 'prenegotiation' stage (Crocker et al. 2004) have been central throughout the conflict and transition in Northern Ireland. However, in the context of the LVR Bill, we are presented with an example of their effective utilisation in the development of a TJ mechanism.

This article is based on research carried out between 2012 and 2018. Data was collected via a review of media archives and government records, and through semi-structured interviews with key actors including staff of the Independent Commission for the Location of Victims' Remains (ICLVR), relatives of the 'disappeared,' staff of NGOs, ex-combatants, politicians, academics and journalists.³

During fieldwork, a fundamental and previously overlooked aspect of the process for recovering the remains of the ‘disappeared,’ was highlighted: that much of the mechanics of the process were ‘quietly’ managed. Developing the notion of QTJ proved central to understanding why the response to the ‘disappearances’ that occurred during the NI conflict has been quite effective, in a context where attempts to deal with the past in a more comprehensive way continue to struggle to get off the ground, some 20 years after the GFA (see e.g. Healing Through Remembering 2013; Lawther 2014; McEvoy and Bryson 2016).⁴

Using the development of the ICLVR as a case study, the evolution of what I term ‘quiet’ Transitional Justice will be explored in particular with regard to its impact on the development of a relationship of trust between the ICLVR and the IRA and how this has contributed to a (limited) version of truth recovery. Before exploring the wider theoretical relevance of the work of this institution – particularly in terms of how issues of legitimacy can be reconciled with the secrecy of the process, I will first analyse some of the background to the establishment of the ICLVR.

‘Disappearing’, Pre-legislation Negotiation and Quiet Diplomacy

Between 1972 and 1985, 16 individuals were ‘disappeared’ by paramilitary organisations linked to the conflict in and about Northern Ireland. The Provisional Irish Republican Army (PIRA) was responsible for the majority of these ‘disappearances’ (Dempster 2016; 2019). Following the IRA’s ceasefire of 1994, the families of the ‘disappeared’ began to publicly call for Sinn Féin – and Gerry Adams (President of Sinn Féin from 1983-2018) in particular – to take action with regards the ‘disappeared’ (see e.g. Acheson 1995). Public and political pressure mounted and in 1999 the ICLVR was established to confidentially gather information and use that information to recover remains. It was established via legislation passed in both the British and Irish parliaments and the signing of an international agreement (Criminal Justice (Location of Victims’ Remains) Act 1999; Northern Ireland (Location of Victims’ Remains) Act 1999). The British legislation: The Northern Ireland (Location of Victims’ Remains Act) 1999 (herein the LVR Act/ LVR legislation) will be cited here, although the two are almost identical in wording. In a context where the debate on how to deal with the legacy of the ‘Troubles’ continues and where the idea of an amnesty remains highly controversial⁵ – the 1999 legislation passed with little fanfare. The reasons why are instructive.

Despite claims by some (e.g. Morgan 2002) that the legislation established an amnesty for those involved in the murders and ‘disappearances,’ this remains a point of contention. An amnesty is a negation of criminal and civil liability (Freeman and Pensky 2012; McEvoy and Mallinder 2012). This legislation did not provide such an unqualified guarantee of non-prosecution (Poole 2009). Instead, it stipulated that any information provided to, or evidence obtained by, the Commission, would be inadmissible in court proceedings. It also limits forensic testing on the bodies and associated items (e.g. clothing, jewellery etc.) to that required to confirm the identity of the deceased (LVR Act 1999). As highlighted by Dominic Grieve MP during the House of Commons’ debate, although the “Bill does not provide an amnesty...its practical effect must be to make it most improbable that anyone will ever stand trial” (HC Deb 10 May 1999, vol 331, col 72).⁶

Regardless the technical discussions on whether or not the legislation reached the legal threshold for an amnesty, its potential as the object of a political dogfight is obvious. The legislation was passed at a time of considerable political distrust regarding the bona-fides of Republicans. The IRA’s then reluctance to decommission its weapons (not completed until 2005), ongoing ‘punishment’ violence against alleged criminals wherein people were shot and

beaten and killings by the IRA of alleged drug dealers (using the nom de guerre Direct Action Against Drugs) were viewed by many critics as proof positive that the Republican Movement was not serious about ending violence (Jarman 2004; Monaghan 2004; Silke 1999). Any initiative with even a passing resemblance to an amnesty directed towards such a group would have anticipated significant opposition. Yet, the Bill was passed and the ICLVR was established with little resistance. As one veteran human rights activist described:

The model for dealing with the ‘disappeared’ seemed to creep up on people...it was...put in place with not much...public debate...[the legislation] effectively offers a de facto amnesty...concepts that just spark intense public controversy...And yet it would seem to be possible to do it with very little fuss.⁷

The background work which was the precursor to the passage of the legislation was obliquely referenced in the parliamentary debates on both sides of the Irish sea. In the Irish parliament, one Dáil member Conor Lenihan praised the Minister for Justice for having played a “good and positive role” working on “sensitive issues about which one cannot boast” concerning “practical, though

distasteful measures” (DE Deb 5 May 1999, vol 504, no 2). In Westminster the Minister of State for Northern Ireland, Adam Ingram reassured the House that: “The British Government have had no contact with the IRA on this issue.” However, he did go on to acknowledge that communication “...has been handled through an intermediary with the Irish Government” (HC Deb 12 May 1999, vol 331, col 347). It is obvious from these remarks that communication took place between the Irish government, an intermediary, and the IRA, in attempting to develop a method for locating the remains of the ‘disappeared.’

Of course such ‘back-channel’ negotiations are a regular feature of what is termed in the political science literature as ‘quiet diplomacy’ (Wanis-St John 2006). Reportedly coined by United Nations Secretary-General of 1953-1961, Dag Hammarskjöld (Åhman 1958), the term ‘quiet diplomacy’ referred to ‘private diplomatic methods’ of communication away from the glare of publicity (Hammarskjöld 1958, Johns 2012; Kemp 2001). Such communication has become an ‘ubiquitous feature’ of conflict resolution and political negotiations, utilised, for example, in the context of Israel and Palestine, and South Africa (Ó Dochartaigh 2011, 767; Pruitt 2008).

There are a number of overlapping themes from this diplomacy literature that are of relevance to TJ. In particular, the reduction of uncertainty between parties, the creation of space and avoidance of the 'audience effect' (Pruitt 2008; Wanis-St. John 2006), and the provision of opportunities for relationship-building are all exemplified in how the 'disappeared' process was managed in Ireland and Britain.

The 'prenegotiation phase' of talks can be characterised by widespread uncertainty (Wanis-St John 2006). Quiet diplomacy can facilitate the redefinition of problems and the development of a shared commitment to negotiate. The reality behind public posturing can be examined without making a public commitment (Crocker et al. 2004; Pruitt 2008). As discussed above, in the post-ceasefire period, there was significant political and public uncertainty over Sinn Féin and the IRA's commitment to the pursuit of exclusively peaceful means. Uncertainty also existed over the likelihood of recovering the remains of the 'disappeared.' Quiet diplomatic efforts in the work between the Republican Movement, the interlocutor and the two governments facilitated a phase of what Wanis-St. John (2006) has described as 'exploring possible solutions without public commitment.'

The space created by the exclusion of audience facilitated a working through of practical and logistical issues and challenges, the advancing of arguments, and developing of what Johns (2012) has termed 'workable solutions' on a confidential basis which was appropriate in the Irish peace process context (Ó Dochartaigh 2011). By excluding the public from these conversations, potentially spoiler audiences were prevented from influencing or disrupting communication. Thus, what negotiations and diplomatic specialists term, the 'audience effect' (Pruitt 2008) – the adoption of more aggressive negotiating behaviour because an audience is present – was avoided.

In this 'space', relationships can develop that provide a basis for making progress. Communication, 'entails recognition of the other,' and this can develop into dialogue and understanding (Sofer 1997, 181). This sense of solidarity is further enhanced through sharing that which is secret (Arthur 1999; Ó Dochartaigh 2011). Negotiators 'may begin seeing each other as fellow human beings rather than simply as members of an opposing group' - in the ideal scenario leading to 'a reduction in stereotyping and an increase in respect, empathy, and trust' (Pruitt 2008, 42).

As introduced above, such quiet conversations were a long-term feature of the Irish peace process and transition. In the early 1970s, a Derry businessman Brendan Duddy ('the Contact') began to operate as an intermediary between senior MI6 agent Michael Oatley and Ruari Ó Brádaigh, then President of Sinn Féin. This back-channel was used at a number of stages throughout the conflict, for example in 1980 for negotiations aimed at bringing the Republican hunger strikes to an end, and between 1990 and 1993, for negotiations on the conditions required for the beginning of a talks process. This period of back-channel negotiation culminated in the IRA's 1994 ceasefire (Ó Dochartaigh 2011; Powell 2009; Taylor 1998).

With regard to the 'disappeared,' the outworkings of these discussions inevitably had to come into the public domain. On 29 March 1999 both the British and Irish governments released statements announcing their willingness to change the law so that evidence obtained during the search for the 'disappeared' would not be used in prosecution (Gay 1999). In what was obviously a previously agreed process, a statement from the IRA followed, acknowledging its involvement in 'disappearing' and naming nine victims.⁸ 'Quiet' diplomatic efforts in this case culminated in these choreographed public statements. The veteran (former) BBC security correspondent Brian Rowan

took this statement from an IRA representative, and spoke of its significance in an interview with the author:⁹

I can remember taking the statement in 1999 from the IRA, and before it was read to me...the IRA leadership spokesman [was] waiting for a news bulletin which said that Dublin was going to put this process in place. Had Dublin not done that, this statement wouldn't have been read to me...

The Passage of the Legislation

Having explored the period before the disappeared legislation was enacted I now want to look more closely at the passage of the legislation itself. One interviewee recounted of the LVR Bill (emphasis author's own): "I don't recall it being that controversial...*it was quietly processed.*"¹⁰ The notion of 'quietly' introducing legislation appears at first glance to be counter-intuitive. However, as Cohen (2011, xxviii) contends, '*quiet constructions*' are possible, particularly, 'where claims-makers are professionals, experts or bureaucrats, working in organizations and with no public or mass media exposure.' Of course, debates in the British parliament are open to the media, however, not all receive the

same level of attention. I will argue below that MPs may have deliberately sought to avoid over-exposure to a public audience on this issue. There were at least three factors at play with regard to the 'quiet' passage of this legislation: timing, framing, and the 'win win' nature of the legislation.

With regards timing, a consideration of contemporary news reports indicates that the public gaze was focused elsewhere at the time the LVR Bill passed through parliament. What was making the front pages of the *Belfast Telegraph* and *The Irish News*¹¹ was the decommissioning of weapons and the implementation of the GFA. Decommissioning was an issue with which 'the media became practically fixated' (Rolston 2007, 347). In this case, this 'fixation' arguably allowed the passing of the LVR legislation to go relatively unnoticed by those not directly involved in the debates. Coverage of the LVR Bill was brief and rarely made the front page (Dempster 2019). As the press influences public debate (Wolfsfield 2004), the passing of the Bill at such a time may have been a strategic move on the part of the government.

The second factor is how the issue was framed by the families of the 'disappeared.' Effective motivational framing is reliant on the use of frames that are accessible to many (Snow and Benford 1988) and the families' framing

drew on cultural values intrinsic to wider Irish society. Three key frames were used (Dempster 2019). Firstly, throughout their campaign families have emphasised the importance of family relationships, highlighting the impact of the 'disappearance' on surviving family members and emphasising the need for parents to have their children's bodies returned for burial before they themselves pass away. Secondly, from the earliest reports families emphasised the imperative to give their relatives Christian burials. For example, Helen McKendry stated of her mother, Jean McConville: "all we want is to bury her with dignity" (Acheson 1995). Thirdly, the 'disappeared' were framed, at least by the families, in a way that excluded the political, and emphasised the humanitarian issue at hand (Dempster 2019). They communicated their grief with a relatable simplicity that rendered their call for the return of their loved ones remains one that - as Viscount Brookeborough remarked - "no reasonable person could deny" (HL Deb 18 May 1999, vol 601, cc. 153-190).

The third factor is that, at a political level the issue was a 'win win' for political actors. For the two governments, it allowed them to respond to the families' campaign, which had widespread political support from across the spectrum in Northern Ireland, the Republic and Britain. For Republicans, it provided a way of resolving an issue which had become a political embarrassment for them.

For Unionists, the search process would shine a spotlight on “Republican wrongdoing.”¹² For the Conservative opposition, which abstained in the vote, outright opposition to families getting their loved ones remains returned was hardly the opportune moment to depart from historical cross-party bipartisanship on the Northern Ireland peace process. As one interviewee summed up, the legislation did not “threaten anybody’s political position.”¹³ The only people who stood to ‘lose’ if the legislation did not result in the recovery of the bodies were the families. To date, 19 years since the legislation was passed and the ICLVR established, the bodies of 13 of the ‘disappeared’ have been recovered.¹⁴

In the second part of this article, I will explore the relationship between QTJ and three themes drawn from the experience of the ‘disappeared’ in Ireland: truth recovery, trust and legitimacy.

QTJ and Truth Recovery

Truth recovery involves ‘putting together the mosaic of past atrocities’ (McEvoy, Dudai and Lawther 2017, 407). Truth commissions, tasked with establishing ‘an accurate historical record’ (Hamber and Kibble 1999) have become ‘a staple of

the transitional justice menu' (Roht-Arriaza 2006, 4). Such institutions may be required to frame past acts of violence as one element of a formal policy or broader pattern, or indeed as a symptom of wider structural challenges (Gready 2011). Trials also have a truth recovery function, through using the law to establish a record of past abuses (McEvoy, Dudai and Lawther 2017; Osiel 1999). The establishment of truth is argued to both address the needs of (some) victims, as well as to play a role in helping countries and citizens to come to terms with the past. This may involve informing the wider public of the nature and extent of past violations, contributing towards the development of 'mutual understanding' between former enemies, or providing a basis for the structural and judicial reforms that may function as a starting point for the development of a more positive future (see e.g. Bakiner 2013; Hayner 2002; Llewellyn and Howse 1999). The uncertainty surrounding the fate of the 'disappeared' is argued to provide a 'specific drive' for truth recovery (Cohen 1995, 19).

The key issue with regard to Northern Ireland's 'disappeared' was incentivising those with knowledge of burial site locations to come forward. The only way in which that could be done was if they could be guaranteed non-prosecution. One senior Republican put it to me as follows (emphasis author's own):

I mean the Republicans required, in order to go to people, including dissident people who may have been involved, Republicans needed to be able to turn around and say: 'look, none of this is going to be used. If you dropped your diary into the grave...none of this is going to be used against you.' *So there is an incentive to right this wrong.*¹⁵

This is a design challenge faced by all truth recovery bodies in TJ. In some instances, it is framed as a carrot and stick. In her analysis of the South African TRC, Mallinder highlighted the need for both. The 'carrot' of amnesty was created, but offenders were less likely to apply without the 'stick' of the threat of prosecution (Mallinder 2008). The stick – in the case of the 'disappeared' was arguably not the threat of prosecution. Since the GFA was signed in 1998, there have been four successful prosecutions for pre-1998 conflict-related murders or attempted murders (Bryson and McEvoy 2016). Rather, the stick in this context was a political one. In a context where no one would be prosecuted for providing information on the location of remains, as Dominic Grieve MP argued, if the IRA did not cooperate, "nothing could be more damaging to them...than to be seen to be unable and unwilling to honour their commitment" (HC Deb 10 May 1999, vol 331, col 75).

So how real was the stick associated with the ICLVR legislation in practice? A key dynamic here is the Republican base. At one level, despite significant political opprobrium for the cruelty of not only killing suspected informers but ‘disappearing’ their bodies, the issue had no discernible impact on Sinn Féin’s political support during the conflict (of course, one can question the extent to which the practice was known about beyond those directly involved (see Dempster 2019). However, following the emergence of the families’ campaign and the establishment of the ICLVR, the pressure on the Republican movement was not entirely illusory. Keohane and Nye’s concept of ‘reputational accountability,’ is instructive here. With this form of accountability, the sanction is one of embarrassment and damage to one’s reputation, or the reputation of one’s organisation (Keohane and Nye 2003). Were the IRA not to take advantage of the opportunity the legislation provided, it – and Sinn Féin – would suffer the ‘sanction of embarrassment’ (Keohane and Nye 2003, 390) within the Republican and nationalist communities – communities in which Sinn Féin was seeking to develop its political aspirations at that time. Given that, even within the Republican community, the practice of ‘disappearing’ had been criticised, the satisfying of this audience would have been an important task for Sinn Féin

(Dempster 2019). In this case, QTJ facilitated the creation of a mechanism that incentivised confidential (limited) truth-provision by a non-State actor.

QTJ and Trust

The notion of trust is a complex one, addressed across a broad range of academic literature including sociology (e.g. Giddens 1984; Misztal 1996), social psychology (e.g. Deutsch 1958; Kee and Knox 1970), political science (e.g. Dogan 2005; Eder et al. 2015) and economics (e.g. La Porta et al 1997). What connects the various definitions across a range of disciplines is the involvement of some form of risk-taking (Horne 2017). Trust is associated with expectation, probability, or predictability. This expectation is of an outcome that is desirable or beneficial, or at least one that is not harmful or damaging (Deutsch 1958; Hwang and Burgers 1997; Kee and Knox 1970). Trust can serve to alleviate fear and render long-term, future cooperation more favourable than short-term gains (Hardin 2006; Hwang and Burgers 1997; La Porta et al. 1997). Trust is argued to be ‘vital for the maintenance of cooperation’ (Misztal 1996, 12) and to be of particular importance when that co-operation is ‘a vital and a fragile commodity’ (Gambetta 1988, ix) – as is the case with the process being addressed in this article.

In transitional contexts, trust often requires rebuilding relationships distorted by violence and suffering. Gaining trust can help people to heal, and trusting the 'other' can serve as a basis for reconciliation (Clark 2010; Staub 2006). For Lederach (1997), reconciliation is about relationships, with interdependence a requirement for a peaceful future. As a result of these benefits, trust-building is often a goal in transitional contexts – both as an end goal and as a pathway to the promotion of democracy, establishment of the rule of law, and improved governance. This is particularly significant where a period of conflict or authoritarianism has left a legacy of low levels of trust, both in institutions and between individuals (Horne 2017).

Ruane and Todd argue that the transition from conflict towards peace provides parties with the opportunity to 're-categorise' their opponents. The development of lasting peace can be impeded if these 're-categorisations' are found to have been mistaken (Ruane and Todd 2007, 454). Locating the bodies of the 'disappeared' was one way in which the Republican Movement could demonstrate its commitment to peace (Dempster 2016; 2019) and, in so doing, enhance its re-categorisation in the eyes of their opponents. In divided societies internationally, continuing uncertainty over the fate of missing persons can fuel

mistrust between communities (Clark 2010). Alternatively, finding a solution to these issues can help to build trust (Kovras 2012). In Northern Ireland, where distrust is argued to be a 'legacy' of the conflict and the peace process (Kovras 2012), the process of locating the remains of the 'disappeared' had the potential to contribute to the building of trust. This depended upon the continued and genuine involvement of Republicans in the search process. This was rooted in Republican trust in that process.

Central to the workability of the 'disappeared' commission has been the development of relationships of trust between Commission staff and the Republican movement. One interviewee explained:

the people concerned have to...have trust...They have to be convinced...That they will remain anonymous...the sense of trust, the sense of confidence, and the sense of confidentiality is ensured – that is...the most crucial part of the process...that is what has been able to unlock all those secrets.¹⁶

Also of significance is that the families of the 'disappeared' have trust in the ICLVR. One family member interviewed described the work of the Commission

as “tremendous” mentioning in particular how important it was to families that they could rely on Commission staff to keep them informed of progress in the search process, and to know that the Commission staff have the required expertise to recover remains.¹⁷

For parties to willingly support a transaction, some trust is needed (Hwang and Burgers 1997). In the case at hand, Republicans needed to trust the legislation in order to engage with the search process. For one senior Republican interviewed the LVR legislation “was a very powerful document, one of the best to come out of the conflict.” It meant that those Republicans nominated to gather information “had the authority to turn round to people and say, listen, here is the legislation...It’s public. You’re not going to be arrested. But please help us find these remains.”¹⁸ This legal guarantee provided the basis for further trust to develop over time, as a working relationship developed between the Republican Movement and the ICLVR (Dempster 2019). Trust between those Republicans who give information, those Republicans acting as intermediaries between the IRA and the Commission, and the staff of the Commission has been, and continues to be, essential.

As a result of the confidentiality of the process, the nature of communication between the Republican Movement and ICLVR remains highly secret. However, one interviewee with substantial experience of working with ex-combatants proposed a process which in my view fits well with the practice of the search, as large search areas have been narrowed down over time. It involved the conducting of “bilateral interviews with individuals and then bigger focus groups...trying to spark memories.” In the early years of the process, this information was passed to the ICLVR via intermediaries. After a period of going back and forth, it was deemed more practical for the individuals directly involved in these events to engage with the ICLVR.¹⁹ This ‘on site’ engagement was confirmed by Gerry Adams, who remarked in 2008 that ‘individuals with primary knowledge’ were meeting directly with Commission staff at search sites.²⁰ In a 2017 interview following the recovery of the remains of Seamus Ruddy, ‘disappeared’ in 1985 by the Irish National Liberation Army (INLA) in France, Irish Republican Socialist Party member and former INLA prisoner, Willie Gallagher, detailed the process:

I was over a number of times with the disappeared body...along with other people...We told the Commission everything we...knew. We...were able to provide the Commission with ex-INLA members,

current INLA members and anybody who had information...one of the reasons why we were able to do that...was we were able to relay to these individuals...how confidential the whole process was, the integrity of the process itself and the integrity of the Commissioners.²¹

In the Northern Ireland context, repeated contact between the IRA and the British government over a period of more than 20 years (examined above) is suggested to have built a 'limited degree of trust,' in that interaction became more predictable through repeated contact (Ó Dochartaigh 2011, 771). Former Chief of Staff under Tony Blair, Jonathan Powell, has said of informal meetings with Gerry Adams and Martin McGuinness from 1997 onwards that: "The shared risks we took [in meeting secretly] helped establish a relationship of trust" (Powell 2009, 80). Inevitably of course, the secret nature of the discussions which preceded the enactment of the legislation encouraged a lack of trust in certain quarters.²² However, once the legislation was passed and the mechanism was up and running, the key focus in terms of trust was the relationship between the ICLVR, the Republican movement, and the families. A lack of trust in the process amongst political opponents became less relevant.

QTJ and Legitimacy

In this section some of the key literature on legitimacy which is of most relevance to this article will be introduced, particularly with reference to Transitional Justice. Subsequently, I will examine how the 'quiet' process explored in this paper can be considered to be legitimate.

Bottoms and Tankebe (2012) suggest that definitions of legitimacy generally fall into two broad categories. The first group tend to focus upon how citizens react to the rules and decisions made by an authority – i.e. an authority is considered to be legitimate when people believe that the rules it enacts or decisions it makes 'ought to be followed' (see also Tyler et al. 2007). From this perspective, as articulated by Misztal, 'legitimacy involves the degree to which institutions are valued for themselves and considered proper and right' (Misztal 1996, 247). The second category of legitimacy literature tends to place emphasis upon the 'right to rule.' Here, the focus is on whether or not those making the rules or issuing decisions are justified in their claims to hold power over others (Bottoms and Tankebe 2012). For example, Coicaud (2002) and others argue that from such a perspective, legitimacy requires that citizens recognise 'the power-holder's moral right to express that power,' that legitimacy must be discussed in a way that incorporates both power-holders and those

subordinate to that power, and that legitimacy is conditional. Drawing both traditions together for current purposes, as summarised by Beetham (1991, 3), 'where power is acquired and exercised according to justifiable rules, and with evidence of consent, we call it rightful or legitimate.'

In TJ, legitimacy is important at a number of levels. At the macro-level, one of the key reasons for doing transitional justice is to underscore the illegitimacy of past wrongs, to counter denial and to put in place processes designed to prevent their reoccurrence (Haldemaan 2008; Leebaw 2008). In practice, addressing a legacy of past violence requires balancing competing needs and imperatives, each of which may be viewed to a greater or lesser extent as *legitimate*. For example, there may be hard questions to address as to whether or not the past should be addressed at all – what Arthur (2009: 323) describes as reconciling '...legitimate claims for justice with equally legitimate claims for stability and social peace.' Even if the decision is taken to establish a past facing mechanism, such as a truth commission, decisions have to be taken as to which abuses and therefore which victims' needs will take priority. For current purposes, perhaps of most relevance is the importance for TJ institutions to be considered legitimate by those they are designed to engage with (Leebaw 2008). Such efforts to secure legitimacy may be hampered if the drivers of such

institutions appear to local stakeholders to be the 'higher goals' of TJ (e.g. asserting the rule of law) rather than addressing human needs on the ground. In such cases, the communities that they are purportedly there to support may feel that they are becoming 'constituencies which must be managed' (McEvoy 2007, 424). In particular, it is 'crucial,' Seoighe (2016, 357) argues, that victims are involved in the design and delivery of TJ mechanisms if such mechanisms are to be considered legitimate.

In this regard, the ICLVR can be argued to be a form of TJ mechanism that directly addresses a specific need: the return of the bodies of those 'disappeared.' In the next few paragraphs I will explore three factors which I will argue enhanced the legitimacy of ICLVR. First is that it was and is victim-centred. Second, the process took seriously the concerns of the perpetrators and their constituencies. Third, the process can be argued to have 'worked' in that the majority of the bodies of the 'disappeared' have been located.

The work of the ICLVR is indisputably 'victim-centred' (Brown and Ní Aoláin 2014; Karstedt 2010; McEvoy and McConnachie 2013). A 'victim-centred approach' to legitimacy is, for Glasius and Meijers (2012: 232) one that 'stresses acceptance by and utility value for the direct victims of the crimes.' In

the case of the ICLVR, the victims were not just ‘accepting’ of the process, but were a driving force behind its development. They were involved in lobbying support for the recovery of remains at local, national, and international levels (Dempster 2019). The families support has been core to the process, from their years of campaigning, through to attending the House of Commons at the time of the Bill’s passage, to visiting the search locations where the ICLVR is conducting its work. ‘Actions expressive of consent’ introduce morality into processes and publicly declare acknowledgement of legitimacy (Beetham 1991: 18). These visits – both to the search sites and to the House of Commons - carry such ‘declaratory force’ (Beetham 1991: 18). One MP remarked: “following my meeting with two families...all my reservations and doubts [about the Bill] were dispelled by their pleas and their profound need to put to rest their loved ones with a Christian funeral service and burial” (HC Deb 12 May 1999, vol 331, col 380). As I explore in greater detail elsewhere (Dempster 2019) given that the legislation limits the range of possible future actions, in particular the potential for prosecution, it arguably remains “an enormous compromise.”²³ Some family members have at times expressed frustration with this compromise, as exemplified in the following quote from Oliver McVeigh in 2013, whose brother Columba is yet to be found:

Immunity for us hasn't...paid any dividends...we went with immunity because it was our only option to get the information about the bodies... The only people really benefitting are the ones who are getting away with prosecution (Rowan 2013).

Others have on occasion mentioned a desire for prosecution. In 2012, Helen McKendry, daughter of Jean McConville, said that since her mother's body was located, "I want to clear my mother's name and I want to see them [the IRA] brought to justice for what they did" (Maguire 2012). Jean's son, Michael McConville has said: "those that took my mother away and senior Sinn Féin figures that supported them should be rounded up and made to stand trial in the War Crimes Tribunal in The Hague" (WAVE 2012: 22).²⁴ Other families have however spoken of their acceptance of this compromise. For example, Peter Wilson's sister, Patricia, has said:

justice was something we had to waiver in return for getting the information that helped us find the body. I personally think that was a price worth paying (WAVE 2012: 30).

Second, as regards the perpetrators, the process for locating the 'disappeared' took the concerns of the Republican Movement seriously both in terms of the

legislative framework that has been put in place and also in the practical ways in which the ICLVR has undertaken its work. For Buchanan and Keohane (2006: 422), one element of an institution's legitimacy results from its provision of 'comparative benefit' – i.e. individuals or groups are likely to take the rules of an institution as binding if it provides 'benefits that can otherwise not be obtained.' In this regard, the ICLVR provides the 'benefit' of a limited immunity which allows Republicans to respond to an issue which had become a political embarrassment for them, without the risk of prosecution. Furthermore, over time, the ICLVR has demonstrated that it can perform this function effectively, and – of particular importance here – confidentially. This fulfils a further element of Buchanan and Keohane's (2006) conditions for legitimacy – that of institutional integrity.

A further element to consider with regards legitimacy is that this process arguably helped legitimate the Republican Movement's claim that they were now dedicated to pursuing only peaceful political means. Barker has argued for the importance for those 'rebels' seeking power of 'self-legitimation, by the cultivation and creation of distinctive identity' (Barker 2001, 89). Engagement with the ICLVR provided the Republican Movement with an opportunity to 'cultivate' its new identity. For the 'Movement,' its efforts to help to recover the

bodies by providing information to the ICLVR on the location of the remains chimed with broader efforts by Republicans to assert their bona fides as legitimate political actors who were committed to the peace process. The confidential nature of the ICLVR's work, combined with the limited immunity contained within the legislation, created a space in which this could happen.

Third, the ICLVR has, to a large extent, 'worked.' Legitimacy is argued to be conditional (Beetham 1991; Bottoms and Tankebe 2012). From this perspective, for families, the legitimacy of the ICLVR, and the process by which it was developed, is likely to depend on its ability to recover remains. For Republicans, the legitimacy of the process arguably rested on its ability to recover remains in a way that did not result in the prosecution of those involved in perpetrating these acts. If legitimacy is a 'by-product of effective system functioning' (Misztal 1996: 249), that the remains of 13 of the 16 'disappeared' have been recovered and returned to their families for burial – and that this has not resulted in prosecutions of those involved in providing information to the ICLVR - is a legitimating factor to this process.

To conclude this discussion of legitimacy, what draws each of these legitimating factors together is the role of audience. Bottoms and Tankebe (2012)

emphasise the importance of considering legitimacy in relation to different audiences. To an extent, the perceived legitimacy of the ICLVR to the wider population does not really matter. The ICLVR is a discrete institution established to perform a specific task. If discussions of legitimacy must embrace both those who exercise power and those who are expected to obey (Bottoms and Tankebe 2012). In the case of the LVR legislation, the key audiences were the families of the 'disappeared' and the Republican Movement. It was the views of these two constituencies which arguably determined that the ICLVR was a legitimate institution.

This is not to argue that the broader public were irrelevant. Indeed, broad cross community sympathy for the plight of the families was a key resource for the families' campaign (Dempster 2019). Beetham (1991: 17) has argued that legitimacy requires that 'the structure of power must be seen to serve a recognisably general interest, rather than simply the interests of the powerful'. In the case of the LVR legislation, the campaign by families of the 'disappeared' had generated widespread support from across Northern Ireland, the Republic and Britain for the recovery of remains (Dempster 2019). This has been, it should of course be noted, as a result of years of campaigning - an element of the process which was certainly not 'quiet,' rather one which demonstrates the

power that victims' voices can have (Dempster 2019). This legislation facilitated that outcome and arguably served what had become – as a result of the families' mobilisation efforts – a 'recognisably general interest' which happily coincided with the views of the families and the Republican Movement.

Conclusion

If one is seeking a 'spectacle of legality' (Douglas 2001: 41), TJ can be the place to look. However, to focus on the public-facing elements of TJ is to disregard the full picture. In the example presented here, QTJ facilitated a process that has resulted in the recovery of the remains of many of the 'disappeared,' established a limited level of trust, and provided an example of a type of mechanism that 'works' and could be replicated in other contexts. Furthermore, that the families of the 'disappeared' supported the process so developed, that the wider population supported those families, and that the ICLVR has been relatively successful, legitimates a type of TJ that at first seems at odds with what we have come to expect, but is often an integral element of more public-facing mechanisms. Increased scrutiny of 'quiet' processes could contribute to a more comprehensive and nuanced understanding of TJ in a range of contexts.

It is important to note several particularities of the example presented that render it not wholly generalizable. Firstly, the ‘disappeared’ are a small group of victims in the context of Northern Ireland, and indeed, a small number when one considers ‘disappearances’ on a global scale. Furthermore, they were mostly victims of intra-communal violence: many were Catholic, and from Nationalist or Republican communities. In the context of Northern Ireland, where contest over who can be termed a ‘victim’ is a source of significant political controversy (see e.g. Brewer and Hayes 2011; Ferguson et al. 2010; Lawther 2014), the ‘disappeared’ have emerged as a group whose victimhood is relatively uncontested, with their families’ campaign garnering widespread support across the political and religious spectrum (Dempster 2019). The distinct nature of the ‘disappeared’ as a victims’ collective made possible the creation of what one interviewee described as a “bespoke mechanism.”²⁵ While remaining conscious of these contextual specificities, to conclude I will outline several elements of QTJ that are potentially pertinent to transitional contexts elsewhere.

The removal of an audience to the negotiations which facilitated the development of the LVR Bill created space in which progress could be made. Lederach (1997, 27) points to the importance of 'space' in reconciliation:

reconciliation-as-encounter suggests that space for the acknowledging of the past and envisioning of the future is the necessary ingredient for reframing the present. For this to happen, people must find ways to encounter themselves and their enemies, their hopes and their fears.

As explored above, as the LVR Bill was being debated there was significant political noise surrounding the implementation of the GFA, pressure to decommission and the establishment of a power-sharing executive in Northern Ireland. This noise was excluded from the development and passage of the LVR Bill. The relative absence of an audience to the establishment of the ICLVR created a humanitarian, pragmatic, and politically 'quiet' space which nurtured progress.

Secondly, the 'quiet' and confidential nature of the operation of the ICLVR serves to incentivise engagement from those who were involved in the perpetration of violence. The ability to incentivize actors to act in a particular

way is a valuable attribute in TJ (Dixon and Tenove 2013). The ICLVR has, in a number of cases, ‘worked,’ it is trusted by those who engage with it, and it could be replicated in the development of a process to ‘deal with’ the past at a broader level – as proposed with the ICIR. Indeed, one senior Republican interviewed indicated that such a process had been mooted during discussions involving Republican ex-prisoners. He made clear that, with regards truth recovery, “what we were not talking about was the public trial, taped, televised, show...that you had with the TRC in South Africa.” Instead, what was envisioned was “a process whereby people on a collective basis could be requested to give information to a group of very trusted and confidential comrades...the example that we used was the process of the recovery of the remains...most guys would have been comfortable with that.”²⁶ These remarks underscore the fact that ‘loud’ transitional justice processes, such as televised testimony before a truth commission, are not necessarily always the most workable of TJ methods. A workable starting point, however, is a quiet, confidential process involving confidentiality and limited immunity.

Finally, and returning to McEvoy and Mallinder’s (2012: 412), contention that TJ is ‘marked by the inherent tensions between principle and pragmatism,’ the mechanism put in place to locate the remains of the ‘disappeared’ spoke to the

pragmatic side of this tension. The legislation remains — “an enormous compromise.”²⁷ Yet, it is one that facilitated the fulfilment of at least some of the families’ calls to have the remains of their loved ones returned for burial. The process explored in this article demonstrates that taking a pragmatic approach to TJ facilitated the development of a workable response to these ‘disappearances.’ For me, this suggests that ‘workability’ should be a principle of TJ. While this may be considered by some to be something of an ‘unprincipled principle,’ it is one which may help in navigating a route through the - at times competing - expectations and realities of TJ. From such a perspective, the measure of success of a transitional mechanism is not the extent to which it conforms to our expectations of what TJ should ‘look’ like, but rather the extent to which it delivers for those impacted by harm.

Notes

¹ For an analogous discussion on the inherent tensions between principles and pragmatism in the field of transitional justice with regard to amnesties see McEvoy and Mallinder (2012).

² At time of writing, the Northern Ireland Assembly has been suspended since January 2017. This is the fifth suspension since its inception, with the longest period of suspension lasting from October 2002 to May 2007 (see e.g. BBC News 2018; Hazleton 2004; Tonge 2014).

³ Data derived from PhD work funded by a Queen's University Belfast PhD studentship from the Department of Employment and Learning. This piece also draws on postdoctoral posts on two projects (AH/N001451/1 Voice, Agency and Blame: Victimhood and the Imagined Community in Northern Ireland and ES/N0108251 Apologies, Abuses and Dealing with the Past: A Socio-Legal Analysis).

⁴ In May 2018, the Northern Ireland Office launched a public consultation on proposals for addressing the legacy of the past. The Draft Northern Ireland (Stormont House Agreement) Bill details four institutions aimed at 'dealing with' the past. These include: a Historical Investigations Unit, an Independent Commission on Information Retrieval, an Oral History Archive, and an Implementation and Reconciliation Group.

⁵ In 2017 the House of Commons Defence Committee recommended a Statute of Limitations be enacted which would cover all Troubles-related incidents involving former members of the British Armed Forces (House of Commons 2017). McEvoy (2017) has argued that such a statute would i) amount to a “self-amnesty,” ii) impact upon investigations of collusion between state forces and paramilitaries, and iii) make prosecution of any Troubles-related prosecutions difficult. The proposal has been opposed by victims from many sides (see e.g. Young 2017).

⁶ The remains of Jean McConville - a mother of ten ‘disappeared’ from her home in west Belfast - were not located by the ICLVR. They were found by a passer-by and thus the limitations on evidence-gathering set out in the LVR legislation do not apply (‘McConville Son Says Family Endured 31 Years of ‘Hell,’ *The Irish Times*, 5th April 2004). At time of writing, veteran republican Ivor Bell, is awaiting trial over her ‘disappearance.’ However, the evidence against Mr Bell is primarily drawn from the testimony of other Republicans who took part in the infamous Boston College oral history project (See e.g. BBC News 2017; King 2014).

⁷ Interview, Mike Ritchie, veteran human rights activist and casework manager at Relatives for Justice, October 2014.

⁸ 'IRA investigation locates grave sites,' *An Phoblacht*, 1st April 1999. The names of other 'disappeared' individuals have been acknowledged in subsequent years (see Dempster 2016; 2019).

⁹ Interview, Brian Rowan, commentator and former BBC security correspondent, September 2014

¹⁰ Interview, Monica McWilliams, Professor of Women's Studies and Research Fellow in the Transitional Justice Institute at the University of Ulster, September 2014.

¹¹ These newspapers were used as one (*Belfast Telegraph*) has a broadly Unionist stance and the other (*The Irish News*) has a broadly Nationalist stance. Both have large readerships in Northern Ireland (Rolston 1991; Wolfsfield 2004).

¹² Interview, Brian Gormally, Director of the Committee on the Administration of Justice, November 2014.

¹³ Interview, Brian Gormally, Director of the Committee on the Administration of Justice, November 2014.

¹⁴ One of these 13 bodies – that of Eugene Simons – was recovered prior to the establishment of the ICLVR, by a farmer in 1984

¹⁵ Interview, Danny Morrison, Former Director of Publicity for Sinn Féin, January 2015.

¹⁶ Interview, senior Republican ex-combatant, April 2015.

¹⁷ Interview, brother of one of the ‘disappeared,’ October 2015.

¹⁸ Interview, Danny Morrison, Former Director of Publicity for Sinn Féin, January 2015.

¹⁹ Interview, community activist with over 20 years’ experience working with ex-combatants, October 2015.

²⁰ ‘Gerry Adams Welcomes Discovery of Remains in Wicklow,’ *An Phoblacht*, 13th November 2008.

²¹ Willie Gallagher in interview with BBC Radio Foyle, 8 May 1999. Available at <<http://rfe123.org/willie-gallagher-bbc-radio-foyle-interview-transcript-8-may-2017>> [accessed 30 June 2018].

²² E.g. in the House of Lords debate on the Bill, Lord Molyneux remarked that: “as a result of secret...negotiations...the bargains have been struck with the terrorists in great detail...the sole function of your Lordships is now to seal the deal” (HL Deb 24 May 1999, vol 601, cc 639-664).

²³ Interview, Geoff Knupfer, Senior Investigating Officer of the ICLVR, July 2014.

²⁴ As detailed in Note 6 (above), the McConville family’s circumstances differ to those of the others as the remains of Jean McConville were not located by the ICLVR.

²⁵ Interview, former diplomat engaged in efforts to deal with the past in Northern Ireland, June 2015.

²⁶ Interview, senior Republican ex-combatant, April 2015.

²⁷ Interview, Geoff Knupfer, Senior Investigating Officer of the ICLVR, July 2014.

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